



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0603; FRL-9981-45-Region 5]

Air Plan Approval; Minnesota; PSD Infrastructure SIP

Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of a state implementation plan (SIP) submission from Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) relating to Prevention of Significant Deterioration (PSD) for the 1997 ozone, 1997 fine particulate (PM_{2.5}), 2006 PM_{2.5}, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO₂), 2010 sulfur dioxide (SO₂), and 2012 PM_{2.5} National Ambient Air Quality Standards (NAAQS). The Minnesota Pollution Control Agency (MPCA) submitted the SIP revision to EPA on October 4, 2016.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0603. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353-4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, svingen.eric@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background of this SIP submission?
- II. What guidance is EPA using to evaluate this SIP submission?
- III. What is the result of EPA's review of this SIP submission?
- IV. What action is EPA taking?

V. Statutory and Executive Order Reviews.

I. What is the background of this SIP submission?

This rulemaking approves a SIP submission from MPCA dated October 4, 2016, which addresses infrastructure requirements relating to PSD for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

The requirement for states to make infrastructure SIP submissions arises out of CAA section 110(a)(1). Pursuant to CAA section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. CAA section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA section 110(a)(1) and (2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP

submission from submissions that are intended to satisfy other SIP requirements under the CAA. This specific rulemaking is only taking action on the infrastructure SIP elements relating to PSD, provided at CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J).

In previous rulemakings, EPA addressed Minnesota's infrastructure obligations under the various NAAQS. On July 13, 2011 (76 FR 41075), EPA approved most elements of Minnesota's infrastructure SIP submittal for the 1997 ozone and 1997 PM_{2.5} NAAQS. On October 29, 2012 (77 FR 65478), EPA approved most elements of Minnesota's infrastructure SIP submittal for the 2006 PM_{2.5} NAAQS. On July 16, 2014 (79 FR 41439), EPA approved most elements of Minnesota's infrastructure SIP submittal for the 2008 Pb NAAQS. Finally, on October 20, 2015 (80 FR 63436), EPA approved most elements of Minnesota's infrastructure SIP submittal for the 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS. However, because Minnesota did not have an approved PSD program at the time of these rulemakings, EPA generally disapproved infrastructure SIP elements relating to PSD in the rulemakings.¹

¹ States may develop and implement their own PSD programs, which are evaluated against EPA's requirements for each component. States may alternatively decline to develop their own program, but instead directly implement Federal PSD rules. At the time of the infrastructure rulemakings referenced above, Minnesota had chosen to implement the federally promulgated PSD rules at 40 CFR 52.21, and EPA had delegated to Minnesota the authority to implement these regulations. The federally promulgated rules satisfied all infrastructure requirements relating to PSD. However, as a delegated

MPCA's submission dated October 4, 2016, requested that EPA approve into its SIP Minnesota Rule 7007.3000, which incorporates by reference the Federal PSD rules at 40 CFR 52.21. On July 10, 2017 (82 FR 31741), EPA proposed to approve this request, and on September 26, 2017 (82 FR 44734), EPA finalized approval; the change became effective on October 26, 2017. Therefore, Minnesota is now implementing its own SIP-approved PSD program.

In this rulemaking, as requested by Minnesota, EPA is finding that Minnesota has satisfied all infrastructure SIP elements relating to PSD, at CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J), for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS.

II. What guidance is EPA using to evaluate this SIP submission?

EPA's guidance relating to infrastructure SIP submissions can be found in a guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5}² National Ambient Air Quality Standards" (2007 Guidance)³. Further guidance is provided in a September

program, these infrastructure elements were not approved into the Minnesota SIP.

² PM_{2.5} refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, oftentimes referred to as "fine" particles.

³

[https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20071002_harnett_110\(a\)_sip_guidance.pdf](https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20071002_harnett_110(a)_sip_guidance.pdf)

13, 2013, document entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a) (1) and (2)" (2013 Guidance)⁴.

III. What is the result of EPA's review of this SIP submission?

Pursuant to CAA section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. MPCA commenced a public comment period on June 20, 2016, and closed the public comment period on July 20, 2016. Minnesota received three comments, and provided a response to comments in its submittal.

Minnesota provided a synopsis of how its SIP meets each of the applicable requirements in CAA sections 110(a) (2) (C), 110(a) (2) (D) (i) (II), 110(a) (2) (D) (ii), and 110(a) (2) (J) for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS, as applicable.

On May 17, 2018 (83 FR 22913), EPA published a proposed rule that would approve this submission into Minnesota's SIP. This proposed rule contained a detailed evaluation of how Minnesota's submission satisfies certain requirements under CAA section 110. Two comments were received; neither is relevant to this rulemaking. Therefore, EPA is finalizing this rule as proposed.

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https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf

IV. What action is EPA taking?

EPA is approving the submission from Minnesota certifying that its current SIP is sufficient to meet the infrastructure SIP requirements relating to PSD, at CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J), for the 1997 ozone, 1997 PM_{2.5}, 2006 PM_{2.5}, 2008 Pb, 2008 ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} NAAQS. EPA is also making some consistency and clarification edits to Minnesota's infrastructure SIP table in 40 CFR 52.1220.

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major

rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 17, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.1220, the table in paragraph (e) is amended by:

i. Removing the entry for “CAA 110(a)(2)(D)(i) SIP-Interstate Transport”.

ii. Revising the entries for “Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour ozone NAAQS”; “Section 110(a)(2) Infrastructure Requirements for the 1997 PM_{2.5} NAAQS”; “Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM_{2.5} NAAQS”; “Section 110(a)(2) Infrastructure Requirements for the 2008 lead (Pb) NAAQS”; “Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS”; “Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide (NO₂) NAAQS”; “Section 110(a)(2) Infrastructure Requirements for the 2010 sulfur dioxide (SO₂) NAAQS”; and “Section 110(a)(2) Infrastructure Requirements for the 2012 fine particulate matter (PM_{2.5}) NAAQS”.

The revisions reads as follows:

§ 52.1220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MINNESOTA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date / effective date	EPA approved date	Comments
* * *	* *	* *		
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS	Statewide	10/23/2007, 11/29/2007, 5/26/2016 and 10/4/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	Fully approved for all CAA elements.
Section 110(a)(2) Infrastructure Requirements for the 1997 PM _{2.5} NAAQS	Statewide	10/23/2007, 11/29/2007, 5/26/2016 and 10/4/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	Fully approved for all CAA elements.
Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM _{2.5} NAAQS	Statewide	5/23/2011, 5/26/2016 and 10/4/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	Fully approved for all CAA elements except (D)(i)(I), which has been remedied with a FIP, and the visibility protection requirements of (D)(i)(II).
Section 110(a)(2) Infrastructure Requirements for the 2008 lead (Pb) NAAQS	Statewide	6/19/2012, 5/26/2016 and 10/4/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	Fully approved for all CAA elements.
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS	Statewide	6/12/2014, 5/26/2016 and 10/4/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	Fully approved for all CAA elements except the visibility protection requirements of (D)(i)(II).
Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide (NO ₂) NAAQS	Statewide	6/12/2014, 5/26/2016 and 10/4/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	Fully approved for all CAA elements except the visibility protection requirements of (D)(i)(II).
Section 110(a)(2) Infrastructure Requirements	Statewide	6/12/2014, 5/26/2016 and 10/4/2016	[insert date of publication in the Federal Register],	Fully approved for all CAA elements except (D)(i)(I) and the visibility protection

for the 2010 sulfur dioxide (SO ₂) NAAQS			[insert Federal Register citation]	requirements of (D) (i) (II) .
Section 110(a) (2) Infrastructure Requirements for the 2012 fine particulate matter (PM _{2.5}) NAAQS	Statewide	6/12/2014, 5/26/2016 and 10/4/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	Fully approved for all CAA elements except (D) (i) (I) and the visibility protection requirements of (D) (i) (II) .

[FR Doc. 2018-16256 Filed: 7/30/2018 8:45 am; Publication Date: 7/31/2018]